

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made [            ] [    ], 20\_\_\_\_ by and among The Bryn Mawr Trust Company, a Pennsylvania banking corporation ("Escrow Agent"), \_\_\_\_\_("the Prime Contractor"), and\_\_\_\_\_. ("the Subcontractor").

Whereas, the Prime Contractor has been issued Order/ Contract No. [            ] (the "Contract") by the [            ], an agency of the U.S. Government (the "Government"), pursuant to which Prime Contractor will perform certain work for the Government; and

Whereas, Prime Contractor will enter into a subcontract with Subcontractor to perform certain work and furnish certain materials in connection with the Contract; and

Whereas Prime Contractor agrees to assign to the Escrow Agent all proceeds paid under the Contract and desires that all monies paid by the Government for invoices under the Contract be disbursed by the Escrow Agent to Prime Contractor and Subcontractor in accordance with joint written payment instructions submitted to the Escrow Agent by the parties (as further described below).

NOW THEREFORE, the parties agree as follows:

1.     The Account.

(a)     Prime Contractor will assign to Escrow Agent, pursuant to Federal Acquisition Regulation ("FAR") Part 32.8, its right to payment under the Contract for all monies due or to become due for services performed by the Prime Contractor and the Subcontractor under the Contract. Escrow Agent accepts and acknowledges the assignment by performing its duties under this agreement.

(b)     The Escrow Agent will establish an account (the "Escrow Account") into which all funds received under the Contract relative to services performed by Prime Contractor and Subcontractor shall be deposited. Copies of the Notice of Assignment, in the form attached hereto as Exhibit A (the "Notice of Assignment"), and Acknowledgement of Assignment, in the form attached hereto as Exhibit B (the "Acknowledgement of Assignment"), shall be provided to Subcontractor and Escrow Agent.

(c)     In the event that the Government does not acknowledge the Assignment pursuant to paragraph 1(a), Prime Contractor agrees that it will designate Escrow Agent as the depository for all payments due to Prime Contractor under the Contract. This designation shall not be changed without the express prior consent of Subcontractor.

2.     Submission of Invoices.

(a)     Prime Contractor will promptly submit correct invoices to the Government, accompanied by all documentation necessary for payment. Prime Contractor's invoices shall

include the charges to the Government for all Subcontractor invoices applicable to the Contract. Subcontractor shall provide Prime Contractor its invoices in accordance with the terms of sale between Prime Contractor and Subcontractor. Prime Contractor acknowledges that this Escrow Agreement merely establishes a mechanism for payment which in no way limits or relieves Prime Contractor from its payment obligations to Subcontractor.

(b) Prime Contractor shall furnish to Escrow Agent and Subcontractor a complete copy of Prime Contractor's invoices to the Government simultaneously with Prime Contractor's submission of those invoices to the Government.

(c) Prime Contractor and Subcontractor shall provide Escrow Agent with instructions, in the form of Exhibit C attached hereto (a "Payment Instruction"), indicating the payments to be made by the Escrow Agent to the Prime Contractor and Subcontractor upon Escrow Agent's receipt of payment from the Government. These instructions shall be signed by a representative of Prime Contractor and Subcontractor.

3. Disbursement from the Escrow Account. Within five (5) business days after Escrow Agent's receipt of (i) funds from the Government in payment of an invoice under the Contract and (ii) a Payment Instruction with respect to such funds, the Escrow Agent shall promptly disburse funds to Prime Contractor and Subcontractor in accordance with such Payment Instruction to the accounts specified in paragraph 4 below. If the Escrow Agent has received written notice of a dispute prior to its receipt of funds from the Government, funds will be retained in accordance with Paragraph 10. If either party inadvertently receives payment directly from customer, said party agrees to immediately remit those funds to the Escrow Agent.

4. Method of Payment. The Escrow Agent shall make all payments by wire transfer to the following accounts or addresses or as instructed in writing by the parties:

To the Subcontractor:

To the Prime Contractor:

5. Monthly Statements.

(a) The Escrow Agent will furnish monthly statements to Prime Contractor and Subcontractor showing all deposits made into the Escrow Account and disbursements made there from. No other statements or notices for the Escrow Agent shall be required or delivered.

6. Duties of the Escrow Agent: Limitation on Liability. Acceptance by the Escrow Agent of its duties under this Agreement is subject to the following terms and conditions, which all parties to this Agreement hereby agree shall govern and control the rights and duties of the Escrow Agent.

(a) The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Agreement and the Escrow Agent shall not be liable except for

the performance of such duties and obligations as are specifically set out in this Agreement, no duties, obligations or responsibilities shall be inferred or implied against the Escrow Agent and any permissive rights of the Escrow Agent hereunder shall not be construed as duties. The Escrow Agent shall not be required to inquire as to the performance or observation of any obligation, term or condition under any agreement or arrangement by the Prime Contractor or Subcontractor. The Escrow Agent is not a party to, and is not bound by, any agreement or other document out of which this Agreement may arise, including, but not limited to, the [Contract]. The Escrow Agent shall be under no liability to any party hereto by reason of any failure on the part of any party hereto or any maker, guarantor, endorser or other signatory of any document or any other person to perform such person's obligations under any such document. The Escrow Agent shall not be bound by any waiver, modification, termination or rescission of this Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto. This Agreement shall not be deemed to create a fiduciary relationship between the parties hereto under state or federal law.

(b) The Escrow Agent shall not be responsible in any manner for the validity or sufficiency of this Agreement or of any property delivered hereunder, or for the value or collectability of any note, check or other instrument, if any, so delivered, or for any representations made or obligations assumed by any party other than the Escrow Agent. Nothing herein contained shall be deemed to obligate the Escrow Agent to deliver any cash, instruments, documents or any other property referred to herein, unless the same shall have first been received by the Escrow Agent pursuant to this Agreement.

(c) The Escrow Agent may execute or perform any duties under this Agreement either directly or through agents, designees, nominees, attorneys, subagents or subcustodians and shall not be responsible for the actions of any such party appointed with due care.

(d) The Escrow Agent may request that the Prime Contractor and Subcontractor deliver a certificate setting forth the names of individuals and or titles of officers authorized at such time to take specific actions pursuant to this Agreement and shall be entitled to rely upon such certificate until a new certificate is delivered to Escrow Agent. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall be under no duty to inquire or investigate the validity, accuracy or content of any such document.

(e) The Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted by it in good faith or for any mistake in act or law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

(f) The Escrow Agent may seek the advice of legal counsel (at the joint and several expense of the Prime Contractor and Subcontractor) in the event of any dispute or

question as to the construction of any of the provisions of this Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the advice or opinion of such counsel.

(g) The parties hereto agree that should any dispute arise with respect to the payment, ownership or right of possession of the Escrow Account, or if the Escrow Agent is uncertain as to its rights or duties hereunder, the Escrow Agent is authorized and directed to retain in its possession, without liability to anyone, except for its willful misconduct or gross negligence, all or any part of the Escrow Account until such dispute or uncertainty shall have been settled either by mutual agreement by the parties concerned or by the final order, decree or judgment of a court or other tribunal of competent jurisdiction in the United States of America, and a notice executed by the parties to the dispute or their authorized representatives shall have been delivered to the Escrow Agent setting forth the resolution of the dispute. The Escrow Agent shall be under no duty whatsoever to institute, defend or partake in such proceedings; provided however, the Escrow Agent may, in its sole discretion, commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary. The costs and expenses, including fees and expenses of Escrow Agent's counsel, incurred in connection with any such proceeding shall be paid by, and shall be deemed a joint and several expense of the Prime Contractor and Subcontractor.

(h) The Escrow Agent shall never be required to use or advance its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder. The Escrow Agent shall not be obligated to take any action which in its reasonable judgment would involve it in expense or liability unless it has been furnished with an indemnity or other security reasonably satisfactory to it.

(i) In no event shall the Escrow Agent be liable, directly or indirectly, for any special, indirect or consequential damages, even if the Escrow Agent has been advised of the possibility of such damages and regardless of the form of action.

(j) The Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes, terrorist attacks or other disasters.

(k) The Escrow Agent is authorized to obey and comply, in any manner it or its counsel deems appropriate, with all writs, order, judgments, awards, decrees issued or process entered by any court or arbitral tribunal with respect to this Agreement and if the Escrow Agent so complies, it shall not be liable to any party hereto or to any other party or person notwithstanding that any such writ, order, judgment, award, decree or process may be subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without competent jurisdiction.



providing the instructions or directions, is, in fact, an authorized person does not constitute gross negligence or willful misconduct.

8. Modifications. No provisions of the Agreement may be waived, amended, discharged or terminated except by written instrument executed by Prime Contractor, Subcontractor and the Escrow Agent.

9. Cost, Fees and Indemnification.

(a) The Prime Contractor and Subcontractor, jointly and severally, agree to pay the Escrow Agent its compensation for its services as Escrow Agent hereunder, and to reimburse the Escrow Agent for all costs, fees and expenses incurred by the Escrow Agent in the performance of its duties hereunder, including the reasonable costs, fees and expenses of the Escrow Agent's counsel all as set forth in the fee schedule attached as Exhibit D hereto.

(b) The Prime Contractor and Subcontractor, jointly and severally, will reimburse and indemnify the Escrow Agent for, and hold it harmless against, any loss, liability, claim, cost, damage or expense, including but not limited to the fees and expenses of Escrow Agent's counsel, incurred without gross negligence or willful misconduct on the part of the Escrow Agent arising out of or in conjunction with its acceptance of, or the performance of its duties and obligations under, this Agreement, as well as the costs and expenses of defending against any claim or liability arising out of or relating to this Agreement. The Prime Contractor and Subcontractor, jointly and severally, agree to indemnify the Escrow Agent for any transfer or other taxes the Escrow Agent is obligated to pay on behalf of Prime Contractor or Subcontractor, respectively, in connection with this Escrow Agreement. Any payments of income from the Escrow Funds shall be subject to withholding regulations then in force with respect to U.S. taxes. It is understood that the Escrow Agent shall be responsible for income reporting only with respect to income earned on investment of the Escrow Funds and is not responsible for any other tax reporting.

(c) The Escrow Agent shall have a lien upon the assets (and all earnings thereon or additions thereto) held in the Escrow Account for any costs, expenses, fees or indemnification obligations that may arise under this Agreement that are not timely paid in full to the Escrow Agent ("Owed Amounts"). The Escrow Agent shall be entitled to debit and retain that portion of the funds in the Escrow Account equal to such Owed Amounts, until all such Owed Amounts have been paid in full. If property or securities are held in the Escrow Account, the Escrow Agent shall be entitled to sell, convey or otherwise dispose of such property or securities for such purpose.

(d) The terms and obligations of this Section 9 shall survive the termination of this Agreement, the payment of all amounts hereunder and the resignation or removal of the Escrow Agent.

10. Disputes.

(a) Prime Contractor shall provide prompt notice to Subcontractor of any dispute between Prime Contractor and the Government that may affect payment under the Contract. Such dispute shall not affect Prime Contractor's obligations to Subcontractor.

(b) In the event of a dispute between Prime Contractor and Subcontractor with respect to any amount invoiced to the Government, either Prime Contractor or Subcontractor may notify the Escrow Agent in writing of the dispute, setting forth a good faith estimate of the amount involved. To the extent funds are available in the Escrow Account, the Escrow Agent shall retain funds sufficient to cover the amount involved until notified, in writing, by both Prime Contractor and Subcontractor that the dispute has been resolved; such notification shall contain instructions for disbursement of the retained funds.

11. Termination.

This Agreement may be terminated, or its instructions modified, at any time by mutual written consent of Prime Contractor and Subcontractor and upon thirty (30) days written notice to all parties hereto. Upon termination, the Escrow Agent shall immediately cease regular disbursement of monies; shall as soon as practicable and within fourteen (14) days following the close of the month in which the termination occurs make an accounting to Prime Contractor and Subcontractor of the funds in the Escrow Agent's possession; and shall thereafter distribute said funds as provided herein. Otherwise, this Agreement shall remain in effect until performance of the Contract is complete and all funds for performance have been disbursed by the Government and all amounts received by the Escrow Agent have been disbursed as provided herein.

12. Resignation.

(a) The Escrow Agent shall have the right to resign upon thirty (30) days written notice to the Prime Contractor and Subcontractor. In the event of such resignation, the Prime Contractor and Subcontractor shall appoint a successor escrow agent hereunder by delivering to the Escrow Agent a written notice of such appointment. Upon receipt of such notice, the Escrow Agent shall deliver to the designated successor escrow agent all money and other property held hereunder and shall thereupon be released and discharged from any and all further responsibilities whatsoever under this Agreement; provided, however, that the Escrow Agent shall not be deprived of its compensation earned prior to such time.

(b) If no successor escrow agent shall have been designated by the date specified in the Escrow Agent's notice, all obligations of the Escrow Agent hereunder shall nevertheless cease and terminate. Its sole responsibility thereafter shall be to keep safely all property then held by it and to deliver the same to a person designated by the other parties hereto or in accordance with the direction of a final order or judgment of a court of competent jurisdiction. Additionally, if no successor escrow agent shall have been timely designated, the Escrow Agent may (i) at the joint and several expense of the Prime Contractor and Subcontractor, petition any court of competent jurisdiction for the appointment of a successor escrow agent or (ii) deposit the Escrow Funds with a court of competent jurisdiction and thereafter have no further responsibilities or duties in connection therewith.

13. Miscellaneous.

(a) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings (written or oral) of the parties in connection herewith.

(b) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without reference to or application of its rules or principles of conflicts of law. Each of the parties hereto hereby irrevocably agrees that any action, suit or proceedings against any of them by any of the other aforementioned parties with respect to this Agreement shall be brought before the exclusive jurisdiction of the federal or state courts located in the [ ], unless all the parties hereto agree in writing to any other jurisdiction. Each of the parties hereto hereby submits to such exclusive jurisdiction. Each party consents to service of process by certified or registered mail, return receipt requested, directed to the address last specified for notices. All parties hereto agree to waive the right to trial by jury to the fullest extent permitted by law. To the extent that in any jurisdiction, the Prime Contractor or Subcontractor may be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (whether before or after judgment) or other legal process, each hereby irrevocably agrees not to claim, and hereby waives such immunity.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors, and assigns. Notwithstanding any other provision contained herein, if the Escrow Agent consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Escrow Agent hereunder.

(d) The failure of any party at any time or times to require performance of any provision hereunder shall in no way affect the right of such party at a later time to enforce the same. The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver or any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.

(e) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(f) Nothing in this Agreement shall confer any rights, either express or implied, upon any person or entity, other than the parties hereto and their respective successors, permitted assigns, heirs, executors, personal representatives, administrators, and legal representatives.

(g) If any provisions of this Agreement shall be declared by any court of competent jurisdiction illegal, void or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect.

(h) The headings of the sections contained in this Agreement are solely for convenience or reference and shall not affect the meaning or interpretation of this Agreement.

(i) The Prime Contractor and Subcontractor each (as to themselves) represent and warrant (a) that this Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Agreement by the Prime Contractor and Subcontractor, as applicable, do not and will not violate any applicable law or regulation.

(j) The parties hereto acknowledge that, in accordance with Section 326 of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (as amended, modified or supplemented from time to time, the "USA Patriot Act"), the Escrow Agent, like all financial institutions, is required to obtain, verify, and record information that identifies each person or legal entity that opens an account. The parties to this Agreement agree that they will provide the Escrow Agent with such information as the Escrow Agent may request in order for the Escrow Agent to satisfy the requirements of the USA Patriot Act.

(k) The Prime Contractor and Subcontractor shall furnish the Escrow Agent, upon execution of this Agreement, and as subsequently required, all appropriate U.S. tax forms and information in order for the Escrow Agent to comply with U.S. tax regulations.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

[ PRIME CONTRACTOR ]

By: \_\_\_\_\_

Name:

Title:

[ SUBCONTRACTOR ]

By: \_\_\_\_\_

Name:

Title:

**THE BRYN MAWR TRUST COMPANY,  
as Escrow Agent**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

**INSTRUMENT OF ASSIGNMENT**

RE: Order/Contract No. [ ] (the "Contract")

KNOW ALL MEN BY THESE PRESENTS: For value received, and in accordance with the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), the undersigned Contractor as Assignor does hereby assign, set over, and transfer unto The Bryn Mawr Trust Company as Assignee, all of Assignor's rights, title and interest in and to all payments from [ ] or from any agency or department thereof accruing under the above-referenced Contract.

The Assignee shall not be held responsible for the performance of any obligations of the Assignor under the Contract.

SEAL:

ASSIGNOR:

(CONTRACTOR)

By: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
(corporate secretary)

Date: \_\_\_\_\_

**EXHIBIT B**

**NOTICE OF ASSIGNMENT**

Date:

To:

Re: Assignment of rights under Order/Contract No. [ ] (the "Contract")

PLEASE TAKE NOTICE that moneys due or to become due under the Contract described above have been assigned to The Bryn Mawr Trust Company, the undersigned, pursuant to the provisions of the Assignment of Claims Act of 1940, as amended, 54 Stat. 1029: 65 Stat. 41 (31 U.S.C. subsection 3727, 41 U.S.C. subsection 15) and the Federal Acquisition Regulations ("FAR") relating thereto (48 C.F.R subsections 32.800-32.806).

A true copy of the Instrument of Assignment executed by the Assignor on [ ] [ ], 2010, is attached to the original hereof.

Payments due or to become due under such contract should be made to the undersigned assignee as follows:

By Wire Transfer:

The Bryn Mawr Trust Company  
[ ]  
[ ]  
[ ]

By Check:

The Bryn Mawr Trust Company  
[ ]  
[ ]  
[ ]

Please return to the undersigned, at your earliest convenience, the three enclosed copies of this Notice with appropriate notations showing the date and hour of receipt, and duly signed by the person acknowledging receipt on behalf of the addressee.

If you have any questions regarding how to handle the processing of this notice or the Instrument of Assignment attached to the original hereof, please contact me at\_\_\_\_\_.

Sincerely,

\_\_\_\_\_

Receipt is hereby acknowledged of the above notice and a copy of the above mentioned Instrument of Assignment. These were received at \_\_\_\_\_ a.m./p.m. on the \_\_\_\_\_ day of \_\_\_\_\_ 200\_.

Signature : \_\_\_\_\_

By: \_\_\_\_\_  
(PRINT NAME)

Title: \_\_\_\_\_

**EXHIBIT C**

[Date]

The Bryn Mawr Trust Company  
10 Bryn Mawr Avenue  
Bryn Mawr, PA 19010  
Attn: Trust/Escrow Administration

Re: Payment Instruction

Dear Sirs:

In accordance with the terms of Section 2(c) of that certain Escrow Agreement dated as of [ ] (the "Agreement") by and among [ ] (the "Prime Contractor"), [ ] (the "Subcontractor") and The Bryn Mawr Trust Company, as escrow agent (the "Escrow Agent"), the Prime Contractor and Subcontractor hereby direct the Escrow Agent to release (i) to the Prime Contractor funds in the amount of \$\_\_\_\_\_ and (ii) to the Subcontractor funds in the amount of \$\_\_\_\_\_.

**[PRIME CONTRACTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[SUBCONTRACTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT D**

**[Escrow Agent fee schedule to be added]**